

Matthew A. Rosenthal (SBN 279334)
matt@westgatelaw.com
Westgate Law
15760 Ventura Blvd, Suite 880
Los Angeles, CA 91436
Tel: (818) 200-1497
Fax: (818) 574-6022
Attorneys for Plaintiff,
RICELA RAMIREZ

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

RICELA RAMIREZ,
Plaintiff,
v.
CAPITAL ONE, NATIONAL
ASSOCIATION,
Defendant.

) Case No.: 2:17-cv-01436
)
) COMPLAINT AND DEMAND FOR
) JURY TRIAL
)
) (Unlawful Debt Collection Practices)
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RICELA RAMIREZ (Plaintiff), by her attorneys, WESTGATE LAW, alleges the following against CAPITAL ONE, NATIONAL ASSOCIATION (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 28 U.S.C. § 227 *et seq.* (TCPA).
 2. Count II of the Plaintiff's Complaint is based on the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 *et seq.* (RFDCPA).

JURISDICTION AND VENUE

3. Jurisdiction of this Court over Plaintiff's Complaint arises pursuant arises pursuant to 28 U.S.C. § 1331 as Plaintiff's claims arise under the laws of the United States, and this Court maintains supplemental jurisdiction over the state law claims alleged herein.
4. Defendant conducts business in the State of California thereby establishing personal jurisdiction.
5. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the acts and transactions alleged in this Complaint occurred here, Plaintiff resides here, and Defendant transacts business here.

PARTIES

6. Plaintiff is a natural person residing in Montebello, Los Angeles County, California.
7. Defendant is a business entity with a principal place of business in McLean, Virginia.
8. Defendant regularly, on behalf of itself or others, engages in debt collection.
9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Since approximately 2016, Defendant contacted Plaintiff to collect money, property or their equivalent, due or owing or alleged to be due or owing.
11. Plaintiff's alleged debt arises from a consumer credit transaction.
12. Since approximately 2016, Defendant constantly and continuously placed collection calls to Plaintiff at Plaintiff's cellular telephone number ending in

1 3152.

2 13. Defendant placed collection calls from numbers including, but not limited to,
3 (800) 955-6600, (800) 365-2024, and (866) 953-7906.

4 14. On or around November 9, 2016, Plaintiff received a call from Defendant at
5 (800) 365-2024 and spoke to Defendant's representative, "James."

6 15. In the course of the telephone conversation on or around November 9, 2016,
7 Plaintiff requested that Defendant cease calling her cellular telephone.

8 16. Despite Plaintiff's request to cease calling, Defendant continued to place
9 multiple autodialed collection calls to Plaintiff on a daily basis.

10 17. Despite Plaintiff's request to cease calling, Defendant's communicated with
11 Plaintiff with such frequency as to be unreasonable under the circumstances
12 and to constitute harassment, including placing multiple collection calls in the
13 same day. As an illustrative example, and not one of limitation, Defendant
14 placed at least two hundred and sixty-five (265) automated collection calls to
15 Plaintiff between November 9, 2016 and January 26, 2017 including upwards
16 of four (4) calls in a single day.

17 18. The natural and probable consequences of Defendant's conduct was to harass,
18 oppress, or abuse Plaintiff in connection with the collection of the alleged debt.

19 19. As a result of Defendant's incessant calls, Plaintiff suffered a severe
20 disruption in her daily life and an invasion of her privacy.

21 20. At all times relevant to this action, while conducting business in California,
22 Defendant has been subject to, and required to abide by, the laws of the
23 United States, which included the TCPA and its related regulations that are
24 set forth at 47 C.F.R. § 64.1200 ("TCPA Regulations"), as well as the
25 opinions, regulations and orders issued by the courts and the FCC

1 implementing, interpreting and enforcing the TCPA and the TCPA
2 regulations.

3 21. At all times relevant to this action, Defendant owned, operated and or
4 controlled an “automatic telephone dialing system” as defined by TCPA 47
5 U.S.C. § 227(a)(1) that originated, routed and/or terminated
6 telecommunications.

7 22. Within four years prior to the filing of this action, Defendant called Plaintiff
8 at Plaintiff’s cellular telephone using equipment which has the capacity to
9 store or produce telephone numbers to be called, using random or sequential
10 number generator and to dial such numbers, also known as an “automatic
11 telephone dialing system” as defined by TCPA 47 U.S.C. § 227(a)(1)(A) and
12 (B).

13 23. Defendant never received Plaintiff’s consent to call Plaintiff on Plaintiff’s
14 cellular telephone using an “automatic telephone dialing system” or an
15 “artificial or prerecorded voice” as defined in 47 U.S.C. § 227 (a)(1).

16 24. Even assuming arguendo that Defendant did have consent to call Plaintiff on
17 Plaintiff’s cellular telephone using an ATDS, that consent was subsequently
18 revoked by Plaintiff on or around November 9, 2016.

19 25. At no time have Plaintiff and Defendant had an “established business
20 relationship” as defined by 47 U.S.C. § 227(a)(2).

21 26. Defendant is not a tax exempt nonprofit organization.

22 27. Defendant’s violation of the TCPA was willful because Plaintiff repeatedly
23 requested that Defendant cease calling Plaintiff.

FIRST CAUSE OF ACTION

(Violations of the TCPA, 47 U.S.C. § 227)

28. Plaintiff incorporates by reference all of the above paragraphs of this
3 Complaint as though fully stated herein.

29. Defendant violated the TCPA. Defendant's violations include, but are not
5 limited to the following

6 (a) Within four years prior to the filing of this action, on multiple
7 occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii)
8 which states in pertinent part, "It shall be unlawful for any person
9 within the United States . . . to make any call (other than a call made
10 for emergency purposes or made with the prior express consent of the
11 called party) using any automatic telephone dialing system or an
12 artificial or prerecorded voice — to any telephone number assigned to
13 a . . . cellular telephone service . . . or any service for which the called
party is charged for the call.

14 (b) Within four years prior to the filing of this action, on multiple
15 occasions, Defendant willfully and/or knowingly contacted Plaintiff at
16 Plaintiff's cellular telephone using an artificial prerecorded voice or an
17 automatic telephone dialing system and as such, Defendant knowing
and/or willfully violated the TCPA.

18 30. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled
19 to an award of five hundred dollars (\$500.00) in statutory damages, for each
20 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds
21 that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is
22 entitled to an award of one thousand five hundred dollars (\$1,500.00), for each
23 and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
24 227(b)(3)(C).

25 31. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in
the future.

SECOND CAUSE OF ACTION

(Violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788)

32. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

33. Defendant violated the RFDCPA based on the following:

- a. Defendant violated §1788.11(d) of the RFDCPA by causing a telephone to ring repeatedly or continuously to annoy the person called;
 - b. Defendant violated §1788.11(e) of the RFDCPA by communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debtor under the circumstances;
 - c. Defendant violated §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant for the following:

- (a) An injunction prohibiting Defendant from contacting Plaintiff on Plaintiff's cellular telephone using an automated dialing system pursuant to 47 U.S.C. § 227(b)(3)(A); and
- (b) As a result of Defendant's violations of 47 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests five hundred dollars (\$500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B); and
- (c) As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests treble damages, as provided by statute, up to one thousand five hundred dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C); and
- (d) Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788.30(b); and
- (e) Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, Cal. Civ Code § 1788.30(c); and
- (f) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law; and
- (g) For such other and further relief as the Court may deem just and proper.

1 Date: February 22, 2017

RESPECTFULLY SUBMITTED,

2 By:/s/ Matthew A. Rosenthal
3 Matthew A. Rosenthal
4 Attorney for Plaintiff,
5 RICELA RAMIREZ
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